

## House Economic Matters Committee

### SUPPORT HB1065 –

#### Testimony of Michelle Rodriguez, Center on Privacy and Technology at Georgetown Law March 5, 2020

The Georgetown Law Federal Legislation Clinic, on behalf of the Center on Privacy and Technology at Georgetown Law, writes in support of HB1065. Since its founding in 2014, the Center has focused on protecting the privacy of historically disadvantaged people. Most recently, the Center has testified on numerous occasions before Congress on consumer privacy legislation.

#### **Utility data reveals intimate, personal details of Maryland residents' daily lives.**

Utilities are a necessity; every person needs water, heat, and electricity to live. Therefore, residential utilities providers are uniquely positioned to collect extremely detailed data from their customers. Unlike many other services, however, people cannot opt out of utilities and rarely have the ability to choose among competitors. When we choose a social network, we might weigh different providers based on what information they collect, how they share it, in addition to reputation and cost. In most instances, there is no similar ability to shop around when it comes to utilities, leaving consumers at the mercy of whatever utility companies are available in their area.

Signing up for utilities services requires residents to divulge identifying information like name, address, employer's name,<sup>1</sup> and social security number (SSN).<sup>2</sup> Utility companies also have access to particularly intimate information about a person's use of water, gas, and electricity. Utilities data can reveal when we are home, how long we shower for, and whether our children sleep with a night light.<sup>3</sup> This information is absolutely intimate.<sup>4</sup> Every time they turn on a hall light, water their garden, or cook a family meal, a user generates a datapoint for the utility company.

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<sup>1</sup> See, e.g., Md. Code Regs. 20.50.04.01-1; Md. Code Regs. 20.55.04.01-1.

<sup>2</sup> Many utilities providers require a SSN to create an account. *Customer Service*, Chesapeake Utilities, <https://chpkgas.com/for-the-home/customer-service/>; *How to Set Up Utilities in your Maryland Home, Smart Settlements*, <https://www.smartsettlements.com/resources/2019/4/8/how-to-set-up-utilities-in-your-maryland-home>; *Registration – Residential and Business*, BGE, <https://secure.bge.com/Pages/ResidentialOrSmallBusiness.aspx>; *User Registration - Residential or Small Business*, Delmarva, <https://secure.delmarva.com/Pages/ResidentialOrSmallBusiness.aspx>; *User Registration - Residential or Small Business*, PEPCO, <https://secure.pepco.com/Pages/ResidentialOrSmallBusiness.aspx>.

<sup>3</sup> Talal Husseini, *As energy companies race to cash in on data, should we be worried?*, Power Technology (July 31, 2019) <https://www.power-technology.com/digital-disruption/big-data/energy-companies-sharing-data/>.

<sup>4</sup> *Kyllo v. United States*, 553 US 27, 38 (2001) (The Agema Thermovision 210 might disclose, for example, at what hour each night the lady of the house takes her daily sauna and bath—a detail that many would consider ‘intimate’.)

## Utility companies sell customer information to data brokers.

There is evidence that utilities providers abuse their access to this uniquely personal information. It is a growing trend for utility companies to sell personal information gathered about their customers to data brokers who then sell the information, without the users' knowledge or consent and with almost no government oversight. These brokers build profiles on individuals, using information such as age, income, race, ethnicity, and interests.<sup>5</sup>

Within this sea of sensitive information, data brokers take pains to acquire utility records. Why? An ad for one data broker, Thomson Reuters, explains that "locator information from utility hookup records" can be used to find people who are not "easily traceable via traditional sources."<sup>6</sup> Indeed, unlike driver's licenses which often include outdated addresses, utilities are necessarily up to date due to the vital nature of utilities and the immediacy with which data is generated and updated.<sup>7</sup> Unfortunately, people who are not "easily traceable" may include survivors of domestic violence who do not want their abusers to discover their location.<sup>8</sup>

The barrier to access this information is very low. Websites like "Spokeo" allow individuals to pay per search at the low price of \$0.95 per person.<sup>9</sup> While not every website may include utility information, the fact that they are part of some data broker's profiles should be of concern. It is of particular concern for anyone, such as families of young children, domestic abuse survivors, or victims of stalking, who are particularly vulnerable to reckless sharing of their personal information.<sup>10</sup>

Tech giants, such as IBM and Thomson Reuters, have started including utility data in their investigative platforms. One recent report discovered some utilities providers are selling information to companies who make investigative platforms for law enforcement, such as CopLink and Thomson Reuters CLEAR.<sup>11</sup> Thomson Reuters' CLEAR contains more than 30

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<sup>5</sup> Douglass MacMillan, *How to stop companies from selling your data*, The Washington Post (June 24, 2019), <https://www.washingtonpost.com/business/2019/06/24/how-stop-companies-selling-your-data/>

<sup>6</sup> Letter from Kyle Keene, CLEAR Government Specialist to Joshua RE: Sole Source Designation—Thomson Reuters CLEAR (Jan. 17, 2018) [https://www.prorfx.com/Storage/110S34471\\_051/ProRFx/Upload/Attachments/General/Sole%20Source%20Letter%20-Thomas%20Reuters.pdf](https://www.prorfx.com/Storage/110S34471_051/ProRFx/Upload/Attachments/General/Sole%20Source%20Letter%20-Thomas%20Reuters.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> One survivor found her home address listed on a data broker's website. Brian Pia, *Domestic violence victim speaks out against online data brokers*, Fox57 (November 17, 2017) <https://wach.com/news/nation-world/domestic-violence-victim-speaks-out-against-online-data-brokers-11-17-2017>.

<sup>9</sup> Spokeo, <https://www.spokeo.com/> (last visited March 3, 2020).

<sup>10</sup> People are afraid of this extensive data sharing. The National Network to End Domestic Violence's 'Safety Net Project' even provides guidance for individuals who want to prevent their information from becoming accessible to unwanted third parties. NNEDV, *People Searches & Data Brokers* (2013), <https://nnedv.org/mdocs-posts/people-searches-data-brokers/>.

<sup>11</sup> *Who's Behind ICE? The Tech and Data Companies Fueling Deportations*, Mijente 3, 55 (2018) [https://mijente.net/wp-content/uploads/2018/10/WHO%E2%80%99S-BEHIND-ICE\\_-The-Tech-and-Data-Companies-Fueling-Deportations\\_v3-.pdf](https://mijente.net/wp-content/uploads/2018/10/WHO%E2%80%99S-BEHIND-ICE_-The-Tech-and-Data-Companies-Fueling-Deportations_v3-.pdf).

million utility data records (e.g., names, addresses, service information) from more than 80 national and regional utility providers.<sup>12</sup> CLEAR does not disclose the names of the 80+ utility providers who contribute to their platform.

### **The sale and distribution of utility data is enabling warrantless searches.**

Through CLEAR, law enforcement departments have warrantless access to utilities users' personal information. Generally, law enforcement would most likely be required to get a warrant to access this type of information because of the comprehensive, intimate nature of the data.<sup>13</sup> However, they are able to get around this important procedural requirement by dealing directly with data brokers rather than the justice system.

The Supreme Court's recent *Carpenter* decision makes clear that "...the deeply revealing nature... and the inescapable and automatic nature of [] collection" even when gathered by a private third party "does not make [something] any less deserving of Fourth Amendment protection."<sup>14</sup>

HB1065 is a powerful tool for curbing government overreach by preventing the unauthorized sale of Maryland residents' utilities information. Law enforcement is not precluded from access under HB1065. Rather, it codifies what is already required by the Fourth Amendment: get a warrant.

### **Existing laws and regulations do not protect Maryland residents' utility data.**

Regardless of whether Maryland utilities providers are currently selling customer's information, there is nothing stopping them from doing so. In Maryland, existing regulations for non-service-area-designated utility companies only protect the privacy of payment information.<sup>15</sup> These regulations, which can be found in Title 20, the utilities section of Maryland's regulatory code, only prohibit energy providers from sharing customers' customer's billing, payment, or credit information without the customer's consent.<sup>16</sup> This leaves other important personal information collected by utility companies such as names, addresses, phone numbers, and usage rates completely unprotected.<sup>17</sup> Consent is also not defined leaving providers with the ability to define it for their users. Some providers' privacy policies state that by sharing information with the

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<sup>12</sup> See e.g., Letter from Kyle Keene, CLEAR Government Specialist to Joshua RE: Sole Source Designation—Thomson Reuters CLEAR (Jan. 17, 2018), [https://www.prorfx.com/Storage/110S34471\\_051/ProRFx/Upload/Attachments/General/Sole%20Source%20Letter%20-Thomas%20Reuters.pdf](https://www.prorfx.com/Storage/110S34471_051/ProRFx/Upload/Attachments/General/Sole%20Source%20Letter%20-Thomas%20Reuters.pdf).

<sup>13</sup> *Carpenter v. United States*, 585 U.S. \_\_, 21 (2018) (holding that a warrant may be required where the suspect has a legitimate privacy interest in records held by a third party).

<sup>14</sup> *Carpenter v. United States*, 585 US \_\_, 23 (2018).

<sup>15</sup> Md. Code Regs. 20.53.07.02; Md. Code Regs. 20.59.07.02.

<sup>16</sup> Md. Code Regs. 20.53.07.02; Md. Code Regs. 20.59.07.02.

<sup>17</sup> Md. Code Regs. 20.50.04.01-1; Md. Code Regs. 20.55.04.01-1.

company, a user is consenting to having their information shared with third parties. Thus, even the existing legislation does not sufficiently protect consumers' payment information.

Service-area-designated utility providers in Maryland are overseen by the Public Service Commission ("PSC") and are subject to PSC regulations in lieu of general Maryland Consumer Protection Regulation. PSC's consumer protection regulations do not focus on privacy,<sup>18</sup> but rather, PSC consumer protection regulations concern marketing and solicitation, nondiscrimination, contracts and termination of service.<sup>19</sup> PSC regulations thus also leave consumer data vulnerable to exploitation.

### **HB1065 will protect Maryland resident utility data from exploitation.**

First, HB1065 prohibits utility companies (including gas, water, electric, sewage, and landline phone service providers) and their contractors from selling their customers' personal information. This is important for protecting the data of users from exploitation. Maryland should prohibit utility companies, which are profiting off unrestricted data sharing at the expense of consumers' privacy, from abusing their position of power.

Second, HB 1065 addresses the underlying problem while still permitting some types of data sharing. Utility companies would still be able to share information as required by state or federal law. Law enforcement access to this data will not be denied so long as it is required by a judicial warrant.<sup>20</sup> Consumers would also retain the ability to affirmatively request the sharing of their information for a specified purpose like sharing with a credit reporting agency. This bill would empower consumers by handing them control over their data.

Finally, HB1065 requires utility companies to collect only the personal information they need to provide services. By reducing the data collected on consumers, this bill reduces the potential for private information to be misused or exploited.

This bill is important for anyone who believes that they should control access to information about what is going on in the privacy of their home. We urge this legislature to protect all utility consumers' privacy by passing HB 1065.

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<sup>18</sup> *Consumer Protection*, OPC, <http://www.opc.maryland.gov/Community-Agencies/Consumer-Protection>.

<sup>19</sup> *Consumer Protection*, OPC, <http://www.opc.maryland.gov/Community-Agencies/Consumer-Protection>.

<sup>20</sup> *Naperville Smart Meter Awareness v. City of Naperville*, No. 16-3766 at 11 (7th Cir. 2018) (suggesting warrants are needed for cops to access smart electrical meter data).